



2018/2646(RSP)

20.4.2018

DRAFT MOTION FOR A RESOLUTION

further to Question for Oral Answer B8-xxxx/2018

pursuant to Rule 128(5) of the Rules of Procedure

on the adverse effects of the US Foreign Tax Compliance Act (FATCA) on EU citizens and in particular “accidental Americans”
(2018/2646(RSP))

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on behalf of the Committee on Petitions

B8-0000/2018

European Parliament resolution on the adverse effects of the US Foreign Tax Compliance Act (FATCA) on EU citizens and in particular “accidental Americans” (2018/2646(RSP))

The European Parliament,

- having regard to articles 7, 8 and 21 of the Charter of fundamental rights of the European Union;
- having regard to Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;
- having regard to Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features;
- having regard to Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation;
- having regard to the Council conclusions of 11 October 2016 on tax transparency (2016);
- having regard to the Commission Communication on further measures to enhance transparency and the fight against tax evasion and avoidance;
- having regard to the European Parliament recommendation of 13 December 2017 to the Council and the Commission following the inquiry into money laundering, tax avoidance and tax evasion (2016/3044(RSP));
- having regard to the European Parliament resolution of 6 July 2016 on tax rulings and other measures similar in nature or effect (2016/20138(INI));
- having regard to the OECD Common Reporting Standard (CRS), approved by the OECD Council on 15 July 2014;
- having regard to the questions to the Commission and the Council on the adverse effect of the US Foreign Tax Compliance Act (FATCA) on EU citizens and in particular “accidental Americans”;
- having regard to Rules 128(5) and 123(2) of its Rules of Procedure,
 - A. whereas the Committee on Petitions was seized with a petition from a collective of European citizens raising concerns about the adverse effects of the FATCA, its implementing inter-governmental agreements (IGAs) and the extraterritorial impact of Citizenship Based Taxation (CBT);
 - B. whereas since the entry into force of the FATCA and the related IGAs concluded

between Member States and the US, EU financial institutions, under the threat of franchise destroying penalties in the US, have to disclose detailed information on accounts held by presumed “US persons” to the US IRS, via their national governments; whereas this could constitute a breach of EU data protection rules;

- C. whereas the extraterritorial effects of FATCA and CBT have affected a large number of European citizens, in particular the so-called “accidental Americans” as well as dual European/US citizens and their non-US family members; whereas “accidental Americans” are foreign citizens, who by accident of birth inherited US citizenship, but who maintain no ties whatsoever to the US having never lived, worked or studied in the US, and who do not hold US social security numbers;
- D. whereas the Commission acknowledged that FATCA and the related IGAs have had the unintended effect of hindering access to financial services in the EU for American citizens and any person presenting indicia suggesting that he/she may be subject to FATCA (“US person”);
- E. whereas the lives and livelihood of thousands of EU citizens and their EU families are being very seriously affected by FATCA on a daily basis, as those falling within the definition of “US persons” have their saving accounts frozen, are denied access to all banking services including life insurance, pensions and mortgages; in addition their EU family members are seeing their personal data shared with the US and their access to EU banking services curtailed (e.g. joint accounts/mortgages);
- F. whereas Directive 2014/92/EU (Payment Accounts Directive) obliges Member States to ensure that credit institutions do not discriminate against consumers based on their nationality or place of residence;
- G. whereas the deadline for Member States to transpose the Payment Accounts Directive was 18 September 2016;
- H. whereas the Parliament, in its resolution of 6 July 2016 on tax rulings and other measures similar in nature or effect, took note of a significant lack of reciprocity between the US and the EU in the framework of the FATCA agreement;
- I. whereas FATCA and the OECD Common Reporting Standard (CRS) on automatic exchange of tax information are essential tools to fight corruption, cross-border tax fraud and tax evasion;
- J. whereas the French Assemblée Nationale published a report in October 2016 following its bipartisan fact-finding mission to investigate the extraterritorial effects of certain US laws, including FATCA, recommending that the French Government either negotiate an amendment to its tax treaty with the US or request US legislators to amend US laws in order to allow French “accidental Americans” to exit the US system and their unwanted US citizenship on a no fees, no filings, no penalties basis; whereas a commission was recently set up to specifically look into the extraterritorial taxation of French “accidental Americans” by the US, and resolutions were tabled in November 2017 in both the Senate and the Assemblée Nationale on this particular issue;
- K. whereas the United States and Eritrea are the two only countries in the world that adopt

citizen-based taxation (CBT), and Eritrea has been condemned by the United Nations for its “diaspora tax”;

- L. whereas the United States adopted in December 2017 a significant tax reform, which however did not abolish the citizen-based taxation principle for individuals;
1. Calls on Member States to ensure the full and correct transposition of the Payment Accounts Directive, in particular Article 15 and 16 of the Directive, and guarantee the right for all EU citizens to have access to a payment account with basic features independent of their nationality;
 2. Calls on the Commission to expedite its analysis of national transposition measures of the Payment Accounts Directive and include the situation of “accidental Americans” in its assessment, paying due attention to any discrimination against taxpayers legally residing in the EU and qualifying as “US persons” for the purpose of FATCA by financial institutions;
 3. Urges the Commission to initiate without delay infringement procedures in case of established breaches in the implementation of the Payment Accounts Directive, and report back to the European Parliament and the Council on the measures taken to ensure the proper implementation of the said Directive;
 4. Urges the Commission to investigate without delay any infringement of EU data protection rules by Member States whose legislation authorizes the transfer of personal data to the US IRS for the purpose of FATCA, and start infringement procedures against Member States that fail to adequately enforce the EU data protection rules;
 5. Calls on the Commission to do a full impact assessment of FATCA and the US extraterritorial practice of CBT on EU citizens, EU financial institutions and EU economies, taking into account ongoing efforts in France and other Member States, and explain if a serious discrepancy between EU citizens/residents in different EU Member States exists, especially as regards EU data protection rules and fundamental rights standards as a result of FATCA and “US indicia”;
 6. Calls on the Commission to assess and, if necessary, take action to ensure that the EU fundamental rights and values enshrined in the Charter of fundamental rights, such as the right to privacy and the principle of non-discrimination, as well as the EU data protection rules, are respected in the context of FATCA and automatic exchange of tax information with the United States;
 7. Regrets the inherent lack of reciprocity of IGAs signed by Member States, especially in terms of the scope of information to be exchanged, which is larger for Member States than it is for the United States; Calls on the Member States who signed a Model 1 (A or B) FATCA agreement with the US to consider collectively suspending the application of their IGAs until full reciprocal exchange of financial account information is provided by the United States;
 8. Calls on the Commission and the Council to present a joint EU approach to FATCA to adequately protect the rights of European citizens (in particular “accidental Americans”) and improve equal reciprocity in the automatic exchange of information by the US;

9. Calls on the Council to mandate the Commission to open negotiations with the United States of an EU-US FATCA agreement, with a view to ensure full reciprocal exchange of information and to uphold the fundamental principles of EU law as well as the Payment Accounts Directive, and allow EU “accidental Americans” to relinquish their unwanted US citizenship on a no fees, no filing, no penalties basis;
10. Instructs the President to forward this resolution to the Council and the Commission.